

2018 No. 571

TRANSPORT AND WORKS, ENGLAND

TRANSPORT ENGLAND

**The Network Rail (Kings Mill No. 1 Level Crossing) (Land
Acquisition and Closure) Order 2018**

Made - - - -

14th May 2018

Coming into force - -

4th June 2018

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An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006^(a) for an Order under sections 1 and 5 of the Transport and Works Act 1992^(b) (“the 1992 Act”).

The Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 6th April 2018.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 3 to 5, 7, 8, 11 and 16 of Schedule 1 to, the 1992 Act makes the following Order:—

PART 1
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018 and comes into force on 4th June 2018.

(a) S.I. 2006/1466, as amended by S.I. 2010/439, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755 and S.I. 2017/1070.

(b) 1992 c. 42. Section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29). Section 5 was amended by S.I. 2012/1659.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“the 1990 Act” means the Town and Country Planning Act 1990(e);

“the 1991 Act” means the New Roads and Street Works Act 1991(f);

“address” includes any number or address used for the purposes of electronic transmission;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in the 1980 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“definitive map” means the document published by Nottinghamshire County Council that records the existence of public rights of way in Nottinghamshire;

“deposited plan” means the land and rights of way plan certified by the Secretary of State as the deposited plan for the purposes of this Order;

“development” means the development authorised by a grant of planning permission under the 1990 Act, with the reference number V/2017/0606 dated 18th December 2017 from Ashfield District Council comprising a ramped bridleway bridge across the railway, and any variation or replacement of that planning permission;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“existing bridleway” means the bridleway recorded on the definitive map and shown between points A and B on the deposited plan and the bridleway shown between points A to C to B on the deposited plan;

“highway authority” has the same meaning as in the 1980 Act;

“Kings Mill No. 1 level crossing” is the crossing of the Nottingham to Worksop railway, grid reference E:451993, N:359681, on the level at Mansfield in the county of Nottinghamshire, which has the status of a bridleway;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and maintenance is to be construed accordingly;

“Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;

“the new public right of way” means the new bridleway between points D, E, F, G and H shown on the deposited plan;

“the Order limits” means the limits of land to be acquired or used shown on the deposited plan;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(g);

(a) 1961 c. 33.

(b) 1965 c. 56.

(c) 1980 c. 66.

(d) 1981 c. 66.

(e) 1990 c. 8.

(f) 1991 c. 22.

(g) 1981 c. 67.

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for the purposes of the 1990 Act; and
- (b) any public communications provider within the meaning of section 151(1) of the Communications Act 2003(a);

“the tribunal” means the Lands Chamber of the Upper Tribunal; and

“the undertaking” means the railway undertaking of Network Rail as existing from time to time;

(2) References in this Order to points identified by letters are construed as references to a point so shown on the deposited plan.

(3) References in this Order to numbered plots are references to plot numbers shown on the deposited plan.

PART 2 CROSSING

Closure of Kings Mill No. 1 level crossing

3.—(1) Subject to paragraph (3), the Kings Mill No. 1 level crossing and the existing bridleway are stopped up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of the Kings Mill No. 1 level crossing and the existing bridleway any right of way over the Kings Mill No. 1 level crossing is extinguished and any public right of way over the existing bridleway is extinguished.

(3) Paragraphs (1) and (2) are not to have effect until the new public right of way has been constructed and completed to the reasonable satisfaction of the highway authority in accordance with article 4 (creation and maintenance of new public right of way) and is open for use.

(4) Any person who suffers loss by the extinguishment of any private right of way over the Kings Mill No. 1 level crossing under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply so as to extinguish the rights of statutory undertakers to maintain their apparatus.

Creation and maintenance of new public right of way

4.—(1) The new public right of way is to be completed to the reasonable satisfaction of the highway authority and is to be maintained by and at the expense of Network Rail for a period of 12 months from its completion, and after the expiry of that period by and at the expense of the highway authority.

(2) The new public right of way is to have the status of a bridleway and, subject to paragraphs (3) to (6), in relation to the new public right of way, section 28(b) (compensation for loss caused by public path creation order) of the 1980 Act applies as if that new public right of way had been created by a public path creation order.

(3) In its application by virtue of paragraph (2), section 28 of the 1980 Act has effect with the modifications mentioned in paragraphs (4) to (6).

(4) In subsection (1), for “the authority by whom the order was made” substitute “Network Rail Infrastructure Limited”.

(5) For subsection (2), substitute—

(a) 2003 c. 21.
(b) As amended by S.I. 2006/1177.

“(2) A claim for compensation under this section is to be made to Network Rail Infrastructure Limited in writing within 6 months from the date the new public right of way (as provided for in article 4 (creation and maintenance of new public right of way) of the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018)(a) is open for use and is to be served on Network Rail Infrastructure Limited by delivering it at, or by sending it by pre-paid post to, the registered office of Network Rail Infrastructure Limited.”

(6) Subsection (3) is omitted.

(7) For the purposes of paragraphs (2) to (6), section 307 (disputes as to compensation which are to be determined by Upper Tribunal and related provisions) of the 1980 Act, in its application to section 28 of the 1980 Act by virtue of section 307(1), has effect as if in subsection (2) for “the authority from whom the compensation in question is claimed”, the words “Network Rail Infrastructure Limited” were substituted.

(8) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new public right of way, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the new public right of way to which the action relates was not dangerous to traffic.

(9) For the purposes of a defence under paragraph (8), the court must in particular have regard to the following matters—

- (a) the character of the new public right of way and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a public right of way of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the new public right of way;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new public right of way to which the action relates was likely to cause danger to users of the new public right of way; and
- (e) where Network Rail could not reasonably have been expected to repair that part of the new public right of way before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the new public right of way to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the new public right of way and that the competent person had carried out those instructions.

(10) The new public right of way is to be treated as completed to the satisfaction of the highway authority if the highway authority fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.

(11) This article does not apply in relation to the structure of any bridge carrying the new public right of way over any railway of Network Rail.

(a) S.I. 2018/571.

PART 3
ACQUISITION AND POSSESSION OF LAND
Powers of acquisition

Power to acquire land

5.—(1) Network Rail may acquire compulsorily so much of the land shown on the deposited plan and described in the book of reference as may be required for the purposes of the development or the creation of the new public right of way and may use any land so acquired for those purposes, or for any other purposes that are ancillary to its railway undertaking as existing from time to time.

(2) This article is subject to paragraph (1) of article 8 (power to acquire new rights), paragraph (8) of article 9 (temporary use of land for construction of works) and paragraph (7) of article 10 (cranes).

Application of Part 1 of the 1965 Act

6.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(a) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) In its application by virtue of paragraph (1), the 1965 Act has effect subject to the following modifications.

(3) Omit Section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 14 (time limit for exercise of powers of acquisition) of the Network Rail (Kings Mill No. 1 Level Crossing Land Acquisition and Closure) Order 2018(c)”.

(5) In section 11(1B)(d) (powers of entry) in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for “3 months” substitute “1 month”.

(6) In section 11A(e) (powers of entry: further notices of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 14 (time limit for exercise of powers of acquisition) of the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018”.

(8) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) omit paragraphs 1(2) and 14(2); and
- (b) after paragraph 29 insert—

(a) 1981 c. 67.

(b) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(c) S.I. 2018/571.

(d) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.

(e) As inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 9 (temporary use of land in connection with the development) of the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018.”

Application of the 1981 Act

- 7.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (4) Omit section 5A(a) (time limit for general vesting declaration).
- (5) In section 5B(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 14 (time limit for exercise of powers of acquisition) of the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018”.
- (6) In section 6(c) (notices after execution of general vesting declaration), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A(d) of the Transport and Works Act 1992”.
- (7) In section 7(e) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (8) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (9) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land by article 6 (application of Part 1 of the 1965 Act).

Power to acquire new rights

- 8.—(1) In the case of the land specified in columns (1) and (2) of Schedule 1 (land in which only new rights etc., may be acquired) Network Rail’s powers of compulsory acquisition under article 5 (power to acquire land) are limited to the acquisition of such new rights as may be required for the purposes specified in relation to that land in column (3) of that Schedule.
- (2) Subject to Schedule 2A (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 2 (modification of compensation and compulsory purchasing enactments for creation of new rights)), where Network Rail acquires a right over land under paragraph (1) Network Rail is not required to acquire a greater interest in that land.
- (3) Schedule 2 has effect for the purpose of modifying the enactments relating to compensation, and the provisions of the 1965 Act, in its application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

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- (a) As inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
- (b) As inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).
- (c) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).
- (d) As inserted by S.I. 2017/16.
- (e) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
- (f) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

Temporary use of land in connection with the development

9.—(1) — Network Rail may, in connection with the development and the creation of the new public right of way, enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 3 (land of which temporary possession may be taken) for the purposes described in column (3).

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the works for the purposes of which temporary possession of that land was taken.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail is not required to replace a building removed in connection with the implementation of the development or remove any part of the new public right of way on the land.

(5) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Without affecting article 18 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(a) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1) except that Network Rail is not precluded from—

- (a) acquiring new rights over any part of that land under article 8 (power to acquire new rights); or
- (b) the temporary use of airspace under article 10 (cranes).

(9) Where Network Rail takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13(b) (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article.

Cranes

10.—(1) Network Rail may enter upon and use airspace above the surface of land specified in paragraph (8) for the oversailing of cranes used by Network Rail in connection with the development or the creation of the new public right of way.

(2) The power under paragraph (1) is exercisable on giving at least 7 days' notice to the owners and occupiers of the land.

(a) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(b) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(3) Network Rail may not, without the agreement of the owners of the land, use airspace above the surface of the land as mentioned in paragraph (1) after the end of 7 days beginning with the date of completion of the activities for which the crane has been used.

(4) Network Rail must pay compensation to the owners and occupiers of land above which the power under paragraph (1) is exercised for any loss which they may suffer by reason of the exercise of that power.

(5) Any dispute as to a person's entitlement to compensation under paragraph (4), or as to the amount of compensation, must be determined under and in accordance with Part 1 of the 1961 Act.

(6) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (as applied by article 6(1) to the acquisition of land under article 5(1)) or under any other enactment, otherwise than for loss for which compensation is payable under paragraph (4).

(7) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1) except that Network Rail is not precluded from—

- (a) acquiring new rights over any part of that land under article 8 (power to acquire new rights); or
- (b) the temporary use of land under article 9 (temporary use of land in connection with the development).

(8) This is the land referred to in paragraph (1)—

<i>Area</i>	<i>Number of land shown on the deposited plan</i>
County of Nottinghamshire District of Ashfield	7, 11 to 17 and 22
County of Nottinghamshire Districts of Mansfield and Ashfield	1 to 4 and 10

Compensation

Disregard of certain interests and improvements

11. In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

Set-off for enhancement in value of retained land

12.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil), under article 8 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in value of the land over which the new rights are acquired; and
- (b) any increase in the value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Extinction or suspension of private rights of way

13.—(1) All private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1)(a) (powers of entry) of the 1965 Act,

whichever is the sooner.

(2) Subject to the provisions of this article, all private rights of way over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act,

whichever is the sooner.

(3) Subject to paragraph (6), all private rights of way over land of which Network Rail takes temporary possession under this Order are suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Paragraphs (1), (2), (3) and (4) have effect subject to—

- (a) any notice given by Network Rail before—
 - (i) completion of the acquisition of;
 - (ii) Network Rail's appropriation of;
 - (iii) Network Rail's entry onto; or
 - (iv) Network Rail's taking temporary possession of,
 the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement made between Network Rail and the person in or to whom the right of way in question is vested or belongs which makes reference to this article; whether that agreement was made before or after any of the events mentioned in sub-paragraph (a), or before or after the coming into force of this Order.

(6) If any such agreement as is mentioned in paragraph (5)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in

(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

question is vested or belongs, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(7) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 4 (provisions relating to statutory undertakers etc.) to this Order applies.

Time limit for exercise of powers of acquisition

14.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 6 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 7 (application of the 1981 Act).

(2) The powers conferred by article 9 (temporary use of land in connection with the development) cease at the end of the period of 5 years beginning with the day on which this Order comes into force, except that nothing in this paragraph prevents Network Rail from remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Statutory undertakers, etc.

15. Schedule 4 (provisions relating to statutory undertakers, etc.) has effect.

Certification of plans, etc.

16. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference and the deposited plan to the Secretary of State for certification that they are true copies of, respectively, the book of reference and deposited plan referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

17.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient, and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) 1978 c. 30.

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
 - (b) in any other case, the last known address of that person at the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by name or by the description of “owner” or, as the case may be, “occupier” of the land (describing it); and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission, the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

18. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

19. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

14th May 2018

Natasha Kopala
Head of the Transport and Works Act Orders Unit
Department for Transport

SCHEDULE 1

Article 8

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1)</i> Area	<i>(2)</i> Number of land shown on the deposited plans	<i>(3)</i> Purpose for which rights may be acquired
County of Nottinghamshire District of Mansfield	19 to 21	Access

SCHEDULE 2

Article 8

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASING ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right, as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 3 to the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018),
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 3 to the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018) to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act, as substituted by paragraph 5(3)—

- (a) for the words “land is acquired or taken” substitute “a right over land is acquired”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable”.

(a) 1973 c. 26.

Application of the 1965 Act

4. Part 1 of the 1965 Act, as applied by article 6 (application of Part 1 of the 1965 Act) to the acquisition of land under article 5(1) (power to acquire land), applies to the compulsory acquisition of rights under article 8(1) (power to acquire new rights) —

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is, or is to be, exercisable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure of owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 6(1)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (refusal to give possession to acquiring authority) of that Act are modified accordingly.

(6) Section 20(f) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
 - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
 - (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
 - (d) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016 (c. 22).
 - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
 - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

on a compulsory acquisition of the land under this Order, but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act (as modified by article 6(7)) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over the whole or part of a house, building or factory.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of its decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 3

Article 9

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Area</i>	(2) <i>Number of land shown on the deposited plan</i>	(3) <i>Purposes for which temporary possession may be taken</i>
County of Nottinghamshire	2, 4 and 10	Worksite and access
Districts of Ashfield and Mansfield	3	Worksite and access Creation of new public right of way
Count of Nottinghamshire	7 and 11 to 16	Worksite and access
District of Ashfield	18	Access

SCHEDULE 4

Articles 14 and 15

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc., on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274(a) (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) of the 1990 Act apply in relation to the Kings Mill No. 1 level crossing, any land

(a) Sections 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

which has been acquired under this Order, or which is held by Network Rail and is appropriated or used (or about to be used) by it for the purposes of the development or for purposes connected with the development and for purposes connected with the creation of the new public right of way; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282(a) which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1)—

- (a) references to the appropriate Minister are references to the Secretary of State;
- (b) references to the purpose of carrying out any development with a view to which land was acquired or appropriated are references to the purpose of carrying out the closure of the Kings Mill No. 1 level crossing or carrying out the development or carrying out the creation of the new public right of way as defined in article 2 (interpretation) of this Order; and
- (c) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in sub-paragraph (1).

(3) Where any apparatus of public utility undertakers or of an operator of an electronic communications code network is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which Part 3 of the 1991 Act applies.

(6) In this paragraph—

“electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984(b);

“electronic communications code network” means an electronic communications network within the meaning of the Communications Act 2003(c) to which the electronic communications code applies; and

“public utility undertakers” has the same meaning as in the Highways Act 1980(d).

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- (a) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.
 - (b) 1984 c. 12. Schedule 2 was amended by section 190 of, and paragraph 68 of Schedule 25 and part 1 of Schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and Schedule 18 to, the Electricity Act (c. 29), paragraphs 113-115 of Schedule 8 and Schedule 9 to the 1991 Act, section 107(2) of, and Schedule 4 to, the Arbitration Act 1996 (c. 23), section 25(1) of, and paragraph 22 of Schedule 3 to, the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), section 406(7) of, and Schedule 3, paragraph 75 of Schedule 17 and Schedule 19 to, the Communications Act 2003 (c. 21), section 80(3) of and part 2 of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23), S.I. 1993/3160, S.I. 2006/1177 and S.I. 2009/1307.
 - (c) 2003 c. 21.
 - (d) 1980 c. 66.

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where Kings Mill No. 1 level crossing and the existing bridleway are stopped up under article 3 (closure of Kings Mill No. 1 level crossing) any statutory utility whose apparatus is under, in, upon, along or across the King's Mill No. 1 level crossing or the existing bridleway has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where the Kings Mill No. 1 level crossing and the existing bridleway are stopped up under article 3 any statutory utility whose apparatus is under, in, upon, over, along or across the Kings Mill No. 1 level crossing or the existing bridleway may, and if reasonably requested to do so by Network Rail must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in that other position.

(3) Subject to the following provisions of this paragraph, Network Rail must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the Kings Mill No. 1 level crossing or the existing bridleway; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) do not apply where the works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by Network Rail and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under sub-paragraph (2); and

“statutory utility” means—

- (a) a statutory undertaker for the purposes of the 1980 Act; or
- (b) a public communications provider within the meaning of section 151(1) of the Communications Act 2003.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on Network Rail to acquire compulsorily land and rights in land required in connection with the construction and maintenance of a new, ramped bridleway bridge over the Nottingham to Worksop railway at Mansfield, which development has been separately authorised by a grant of planning permission under Part III of the Town and Country Planning Act 1990 (c. 8) from Ashfield District Council in the county of Nottinghamshire. The Order also confers powers of temporary use of land in connection with that development and the right to oversail certain land with cranes.

The Order also confers powers on Network Rail to stop up the Kings Mill No. 1 level crossing (grid reference E:451993, N:359681), the extinguishment of the existing rights of way over it and creation of an alternative public right of way.

A copy of the deposited plans and the book of reference referred to in the Order may be inspected, on request, at the offices of Network Rail Infrastructure Limited at Network Rail National Records Centre, Unit 5, Audax Road, Clifton Moor, York, YO30 4US.

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